

BRUCE L. BAKER
ROBERT C. BAKER

IBLA 80-747

Decided May 29, 1981

Appeal from the decision of the Alaska State Office, Bureau of Land Management, declaring mining claim AA-30236 abandoned and void.

Reversed and remanded.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management Office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Evidence: Credibility -- Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim

Where a preponderance of the evidence supports a finding that all documents necessary to effectuate a filing under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), were timely filed, a decision declaring a mining claim abandoned and void for failure to file timely the required documentation will be set aside.

APPEARANCES: Charles A. Dunnagan, Esq., Anchorage, Alaska, for appellants.
OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Bruce L. Baker and Robert C. Baker have appealed the decision of the Anchorage State Office, Bureau of Land Management (BLM), declaring the Red Head #1 placer mining claim, AA-30236, abandoned and void for failure to file evidence of annual assessment work on or before October 22, 1979, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1.

The Red Head #1 claim was located on May 27, 1974. Appellants filed timely a copy of the notice of location for the claim on October 2, 1979, at 10:27 a.m. In their statement of reasons, appellants assert that, at the same time as appellant Bruce Baker filed their notice of location with BLM, he submitted a copy of their 1979 affidavit of annual labor. They contend that a BLM employee received and copied the affidavit and returned it to Baker assuring him that the filing was in order. Following a request by the Board for additional information on the circumstances of the filing, appellants report that before going to the BLM office on October 2, 1979, Bruce Baker took the 1979 affidavit of annual labor to a notary in the same building as his wife's office to have it notarized. In an affidavit submitted to the Board by appellants, Irene Baker, wife of Bruce Baker, states that on the morning of October 2 her husband came to her office to get the affidavit notarized. She states, "I recall that he came by and got Marjorie [Schultz, the notary] to notarize the affidavit before he went to the BLM. That was the last thing he had to do before he filed these materials with the BLM." A copy of the 1979 affidavit submitted with appellants' statement of reasons indicates that it was notarized on October 2, 1979. Appellants further report that after Bruce Baker filed their claim papers with BLM in Anchorage, he sent the affidavit of annual labor to Seward to be recorded. They add that they submitted the documents to BLM first because they were not sure that the documents would be returned from Seward in time to meet the October 22 deadline. The affidavit of annual labor submitted on appeal reflects the Seward Recording District's date stamp of October 4, 1979, at 3:41 p.m. Bruce Baker has described the BLM employee with whom he dealt as a "Native, heavy set, early to mid twenties," but he does not remember her name and was unable to find her when he visited the BLM office on November 21, 1980.

BLM reports that on October 2, 1979, the only Native lady who worked in their receiving office was Joyce Harvey, an experienced and reliable employee who has since transferred to another job. Harvey could not recall the transaction between Baker and herself. BLM adds that, on October 2, 1979, BLM received filings for 671 mining claims and states that:

Our policy has been that when an applicant asks to have a copy of the document which is being filed for himself, our personnel has been instructed to date and time stamp that copy as well as the document being filed. It appears that Mr. Baker's copy of his affidavit of annual labor for 1979 was not officially stamped, however, the possibility does exist that an error could have been made on our part due to the large volume of mining claims which were being filed during that time.

[1] Section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1976), requires the owner of an unpatented mining claim located prior to October 21, 1976, to file evidence of assessment work for the claim with BLM within the 3-year period following that date and prior to December 31 of each year thereafter. The corresponding Departmental regulation, 43 CFR 3833.2-1(a), reads:

The owner of an unpatented mining claim located on Federal lands on or before October 21, 1976, shall file in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Failure to so file is considered conclusively to constitute abandonment of a claim under section 314(a) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4.

[2] The question before us is whether BLM received all of the required documentation on October 2, 1979. BLM has been unable to locate appellants' affidavit of annual labor for 1979. This Board has often noted the legal presumption of regularity which attends the official acts of public officers in the proper discharge of their official duties. See, e.g., Phillips Petroleum Co., 38 IBLA 344 (1978); Donald E. Jordan, 35 IBLA 290 (1978); A. G. Golden, 22 IBLA 261 (1975).

This presumption, however, is subject to rebuttal by probative evidence. L. E. Garrison, 52 IBLA 131 (1981). See generally United States v. Hess, 46 IBLA 1, 7-9 (1980). In this case, we find that appellants have reasonably established the course of the missing document by the date it was notarized, the date of the Seward filing and Irene Baker's affidavit. The only evidence that appellants lack which would conclusively establish that the affidavit was timely filed is the BLM date stamp. Appellants' description of what occurred in the BLM office when Bruce Baker went in to submit their filings comports with BLM procedure, though again the date stamp is missing. We note that the copy of appellants' notice of location contained in the case file has the BLM date stamp but the copy submitted with appellants' statement

of reasons, like the affidavit, does not reflect the date stamp. While there still may be room for doubt as to whether the affidavit of annual labor for the Red Head #1 claim was filed, we hold that a preponderance of the evidence before us supports a finding that all required documents were filed timely. Bernard J. Braker, 54 IBLA 332 (1981); L. E. Garrison, *supra*.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and the case files are remanded.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

James L. Burski
Administrative Judge

